

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES CHRISTOPHER SCHNEIDER,

Defendant-Appellant.

UNPUBLISHED

May 22, 2012

No. 303553

Wayne Circuit Court

LC No. 05-009901-FC

Before: RONAYNE KRAUSE, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

In January 2008, a jury convicted defendant of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a) and (b), one count of second-degree criminal sexual conduct, MCL 750.520c(1)(a), and two counts of third-degree criminal sexual conduct, MCL 750.520d(1)(d). The trial court sentenced defendant to concurrent prison terms of 25 to 40 years each for the first-degree CSC convictions, and 10 to 15 years each for the second- and third-degree CSC convictions. In a prior appeal, this Court affirmed defendant's convictions, but vacated his sentences for first-degree CSC and remanded the case to the trial court to "explain why the level of departure from the sentencing guidelines was warranted." *People v Schneider*, unpublished opinion per curiam of the Court of Appeals, issued April 6, 2010 (Docket No. 285666), slip op at 6-10. On remand, the trial court again sentenced defendant to concurrent prison terms of 25 to 40 years each for the first-degree CSC convictions, and 10 to 15 years each for the second- and third-degree CSC convictions. For the reasons set forth below, we affirm defendant's sentences, but remand for correction of the presentence report.

Defendant argues that the trial court again failed to articulate a sufficient basis for the extent of its departure from the sentencing guidelines range of 108 to 180 months (9 to 15 years). We review for the extent of a sentence departure for an abuse of discretion. *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). "A trial court abuses its discretion if the minimum sentence imposed falls outside the range of principled outcomes." *Id.*

A trial court must impose a minimum sentence within the sentencing guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). The court may depart from the guidelines if it "has a substantial and compelling reason for that departure and states on the record the reasons for departure." MCL 769.34(3). The court must also explain why those reasons justify the particular departure chosen by the court. *People v Babcock*, 469 Mich 247,

272; 666 NW2d 231 (2003); *People v Hegwood*, 465 Mich 432, 437 n 10; 636 NW2d 127 (2001). In other words, when the trial court departs from the guidelines, it “must explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been.” *Smith*, 482 Mich at 304. Proportionality is a function of the seriousness of the defendant’s conduct and the defendant’s criminal record. *Id.* at 305. Thus, “the more egregious the offense, and the more recidivist the criminal, the greater the punishment.” *Babcock*, 469 Mich at 263. No precise words are necessary for the trial court to justify a particular departure. *Smith*, 482 Mich at 311.

As scored, the guidelines placed defendant in the C-IV cell of the applicable sentencing grid, for which the sentencing guidelines range is 108 to 180 months (9 to 15 years). MCL 777.62. For a person with a similar criminal history (PRV Level C), the highest possible minimum sentence (for a person in OV Level VI) is 225 months (18.75 years). The fact that defendant’s 25-year minimum sentence exceeds the highest minimum sentence for offenders with similar criminal histories raises the question of whether defendant’s sentences are disproportionate. *Id.* at 307-308. However, as the trial court observed, the guidelines did not account for the fact defendant began abusing the victim when she was just seven years old, and continued routinely abusing her for many years, “well over a hundred times” during those years. The repeated sexual abuse establishes that defendant has a far more extensive criminal history than the guidelines reflect and, thus, he is not truly similarly situated to another offender with the same PRV score. The fact that defendant has no prior convictions means nothing where, as here, the evidence establishes that he was violating the law for a long period of time. *People v Downey*, 183 Mich App 405, 418-419; 454 NW2d 235 (1990). Given the circumstances of the offender and the offense, we hold that the trial court satisfactorily explained the basis for the extent of the departure and that the extent of the departure does not constitute an abuse of discretion.

Defendant also argues that the trial court failed to make corrections to the presentence report. “A presentence report is required upon conviction of a felony where an indeterminate sentence is to be imposed.” *In re Del Rio*, 400 Mich 665, 696; 256 NW2d 727 (1977); MCL 771.14(1); MCR 6.425(A)(1). Before passing sentence, the court must determine that the defendant and his attorney “have had an opportunity to read and discuss the presentence report” and give them “an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report[.]” MCR 6.425(E)(1)(a), (b); MCL 771.14(6). If a challenge is made, the court must resolve the challenge. MCR 6.425(E)(2). “If the court finds merit in the challenge . . . , it must direct the probation officer to correct or delete the challenged information in the report, whichever is appropriate[.]” *Id.*; MCL 771.14(6).

At sentencing, defendant challenged certain information in the original presentence report. The information related to defendant’s education and training, and his physical and mental health. The trial court agreed to make the requested corrections. The disputed information regarding defendant’s health remained in the presentence report, although changes were noted in the updated report. The information regarding defendant’s education and training was omitted from both reports. The prosecutor concedes that remand is appropriate for the trial court to correct the presentence report in the manner indicated at sentencing. Accordingly, we remand for the trial court to correct the presentence report and to transmit a corrected copy to the department of corrections. *People v Russell*, 254 Mich App 11, 22; 656 NW2d 817 (2002), rev’d

on other grounds 471 Mich 182 (2004); *People v Dilling*, 222 Mich App 44, 53-54; 564 NW2d 56 (1997).

Defendant's sentences are affirmed. The case is remanded for correction of the presentence report. We do not retain jurisdiction.

/s/ Amy Ronayne Krause

/s/ Henry William Saad

/s/ Stephen L. Borrello